



IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO LAVON FERTINI, JR., A/K/A
ANTTWON FOGERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89589

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of trafficking in a schedule I controlled substance, 400 grams or more; conspiring to violate the Uniform Controlled Substances Act; and possessing a firearm as a convicted felon. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

While investigating suspected narcotics sales at an apartment complex, police observed Mary Mata conduct an apparent drug purchase. The police detained Mata in a vehicle stop, searched the vehicle and found one pound of methamphetamine, arrested her, and secured her assistance in the investigation. Mata indicated that she purchased the drugs from appellant Mario Lavon Fertini, Jr. Police had Mata arrange a controlled buy from Fertini, arrested Fertini, and conducted a warrantless search of apartment 208. Police identified the apartment as Fertini's and justified the search in reliance on the search clause in Fertini's terms of probation. The search yielded approximately nine pounds of methamphetamine—seven pounds in a hallway closet and two pounds in a back bedroom—and a firearm. Fertini was ultimately convicted of three drug charges and a firearm charge and sentenced to an aggregate term of 22 years to life.

Fertini first argues that he did not reside in the apartment and thus the terms of probation did not authorize the warrantless search of the apartment where the methamphetamine and the handgun were found. Police may search a probationer's residence when the terms of probation authorize such searches and they have probable cause to believe that the probationer resides in the location being searched. *See United States v. Grandberry*, 730 F.3d 968, 973 (9th Cir. 2013) (addressing warrantless searches of parolees); *Seim v. State*, 95 Nev. 89, 93-94, 590 P.2d 1152, 1154 (1979) (observing “no material distinctions between parolees and probationers” for purposes of warrantless searches and the Fourth Amendment). Probable cause as to residence is not a high bar and turns on whether a reasonable officer would find a location to be a probationer's residence based on the totality of the circumstances. *United States v. Barry*, 140 F.4th 1105, 1109 (9th Cir. 2025).

Fertini does not dispute that he is subject to a search clause in the terms of probation. When Fertini was arrested, he had the key to apartment 208 on his person, and Fertini admitted he occasionally slept and showered there. An apartment complex employee told police that Fertini resided at apartment 208 and that the employee had interacted with Fertini in connection with that apartment. Police had observed Fertini enter and exit the apartment over the course of their surveillance. Mata told police that Fertini sent her a text message stating that he was “home” as they arranged the controlled buy and police observed Fertini arriving at the apartment at the time the message was sent. Fertini's argument that he was not on the apartment lease does not outweigh the extensive evidence that Fertini resided at apartment 208. The record thus shows that police had probable cause to believe that the apartment was Fertini's residence,

and suppression of the proceeds of the search was not warranted. Fertini therefore has not shown that relief is warranted on this ground.

Fertini next argues that the district court should have permitted Brad Taylor of the Washoe County forensic science lab to testify. Fertini sought to question Taylor about the absence of DNA and fingerprint testing of the exterior of the plastic bags containing the methamphetamine. “We review a district court’s decision to admit or exclude evidence for an abuse of discretion.” *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Testimony outside the presence of the jury established that Taylor performed and supervised chemical-composition tests to identify controlled substances and was not involved in DNA or fingerprint testing. Taylor identified other individuals who supervised the DNA and fingerprint units. As Taylor’s testimony would not have been relevant for the purposes that Fertini sought to advance, the district court did not abuse its discretion in excluding it. *See* NRS 48.025(2) (“Evidence which is not relevant is not admissible.”). Fertini thus has failed to show that relief is warranted in this regard.

Fertini next argues that insufficient evidence supported the convictions. In reviewing the sufficiency of the evidence, we consider “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (citation modified). Mata was arrested with one pound of methamphetamine, and she testified she purchased it from Fertini and arranged to purchase two additional pounds from him. Text messages corroborated Mata’s testimony. The record contains ample evidence police knew Fertini resided at apartment 208

before the search. In addition to this evidence, Marcus Brown, the leaseholder on the apartment, testified that Fertini lived there with him and stayed in the back bedroom. In that bedroom, police found a handgun, clothing consistent with what Fertini was observed wearing during the surveillance, and two pounds of methamphetamine. They also found another seven pounds in a hallway closet. Brown testified that Fertini sold methamphetamine, and Fertini's driver's license was found on a kitchen table next to a scale. From the totality of this evidence, a rational juror could find Fertini guilty beyond a reasonable doubt of trafficking 400 grams or more of methamphetamine both in the first sale to Mata and in the second arranged sale and conspiring to violate the Uniform Controlled Substances Act. *See* NRS 453.3385(1)(b); NRS 453.401(1). And based on that evidence plus Fertini's prior felony conviction, a rational juror could find Fertini guilty beyond a reasonable doubt of possessing a firearm as a felon. *See* NRS 202.360(1)(b). Insofar as Fertini argues that Brown and Mata were not credible witnesses, Fertini cross-examined them and argued against their credibility in closing argument. The jury was properly situated and informed to weigh the witnesses' credibility. We will not upset that determination. *See Mulder v. State*, 116 Nev. 1, 15, 992 P.2d 845, 853-54 (2000). Fertini therefore has failed to show that relief is warranted in this regard.

Lastly, Fertini argues that several instances of prosecutorial misconduct deprived him of a fair trial.¹ For prosecutorial misconduct

¹While Fertini styles this claim as one of cumulative error, he substantially argues prosecutorial misconduct. Fertini likewise has failed to show that cumulative error merits relief. *See Mulder*, 116 Nev. at 17, 992 P.2d at 854-55 ("Relevant factors to consider in evaluating a claim of

claims, we first “determine whether the prosecutor’s conduct was improper.” *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). If it was, we next determine whether the improper conduct requires reversal. *Id.* Unpreserved claims of error are reviewed for plain error. *Id.* at 1190, 196 P.3d at 477. We conclude that Fertini has failed to show that any prosecutorial misconduct merits relief.

Fertini first argues that the State vouched for the testimony of Brown and Detectives Jenkins and Marko. Asking Brown if he testified truthfully did not give the State’s assurance of Brown’s truthfulness. *See Browning v. State*, 120 Nev. 347, 359, 91 P.3d 39, 48 (2004) (“[V]ouching occurs when the prosecution places the prestige of the government behind the witness by providing personal assurances of the witness’s veracity.” (citation modified)). Moreover, an objection to the question was sustained, and the jury was instructed to disregard such questions. *Cf. Valdez*, 124 Nev. at 1192, 196 P.3d at 478 (concluding that a defendant was not prejudiced by an improper comment where the district court sustained an objection to it “and instructed the jury to disregard the comment”); *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (stating presumption that a jury follows the court’s instructions). Although the State improperly thanked Detective Jenkins for his candor, the State withdrew the statement following an objection, and the court instructed the jury that counsel’s statements are not evidence. *See People v. Barrett*, 570 P.3d 739, 810 (Cal. 2025) (concluding there was “no reasonable likelihood the jury applied the prosecutor’s question in an objectionable fashion” where prosecutor asked a question to elicit vouching but withdrew upon defense

cumulative error are (1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.”).

objection). And asking Detective Marko on redirect whether the content on a phone is generally created by its user did not constitute vouching but rather a response to a topic raised by the defense on cross-examination.

Fertini next argues that the State asked Detective Castro a misleading question on direct examination that implied that the seven pounds of methamphetamine was found in the back bedroom rather than the hallway. While the question was inaccurate, we presume the jury followed its instruction that counsel's questions are not evidence, and this unobjected-to question was fleeting and did not affect Fertini's substantial rights to constitute plain error. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477.

Fertini next argues the State shifted the burden of proof in asking whether the forensic laboratory accepted testing requests from sources other than the State. Improper burden shifting occurs when the State suggests "that it was the defendant's burden to produce proof by explaining the absence of witnesses or evidence." *Whitney v. State*, 112 Nev. 499, 502, 915 P.2d 881, 882 (1996) (citation modified). The district court overruled Fertini's objection, concluding that the burden had not been shifted and that the question most naturally implied other agencies. The record supports the district court's determination, given that the cross-examination repeatedly touched on who would send items to the laboratory with testing requests.

Fertini next argues the State elicited other act evidence of heroin sales in text messages. The message sent by Fertini denied having heroin but asserted having methamphetamine. The message was probative of Fertini's endeavors to traffic methamphetamine and to conspire to violate the Uniform Controlled Substances Act.

And finally, Fertini argues the prosecutor inserted personal opinion into closing argument by stating that “my charging decisions are based on the evidence.” This comment, however, referred to charging decisions as to Mata and Brown. While it would be improper if directed to this prosecution, *see Domingo-Gomez v. People*, 125 P.3d 1043, 1052 (Colo. 2005) (concluding that prosecutor’s comment that the case passed a “screening process” was improper because it hinted at additional evidence and injected the prosecutor’s opinion that the case was not weak), any impropriety from this unobjected-to comment was not plain error given that it was not directed at Fertini’s case. In sum, Fertini has failed to demonstrate a meritorious claim of prosecutorial misconduct in any individual instance or as a whole. *Cf. Collier v. State*, 101 Nev. 473, 482-83, 705 P.2d 1126, 1132 (1985) (recognizing that multiple instances of prosecutorial misconduct may be cumulated), *modified on other grounds by Howard v. State*, 106 Nev. 713, 800 P.2d 175 (1990).

Having considered Fertini’s contentions and concluded that they do not merit relief, we

ORDER the judgment of conviction AFFIRMED.



Herndon, C.J.



Bell, J.



Stiglich, J.

cc: Hon. Scott N. Freeman, District Judge
Law Office of Jeannie Hua
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk